Supreme Court, U.S.
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No. 86-709

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1986

HIROTOSHI YAMAMOTO, *Petitioner*

v.

UNITED STATES OF AMERICA, *Respondent*

On Writ of Certiorari to the
United States Court of Appeals
for the Federal Circuit

PETITIONER'S REPLY BRIEF

HIROTOSHI YAMAMOTO, pro se
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For Petitioner

QUESTION PRESENTED

Whether compliance with the Statutory Notice of Deficiency, Section 6212 of the Internal Revenue Code is mandatory, absolute, explicit and unequivocal.

Whether the Tax Court can be conjured to have jurisdiction, admittedly without the Statutory Notice of Deficiency.

TOPICAL INDEX

	Page
QUESTIONS PRESENTED	i
TOPICAL INDEX	ii
TABLE OF AUTHORITIES	iii
JURISDICTION	1
ARGUMENT	2
CITATION	2
CONCLUSION	3
CERTIFICATE OF SERVICE	4

TABLE OF AUTHORITIES

Page

THOMPSON v. UNITED STATES
430 F 2d 388 (5th Cir. 1970) 2

STATUTES

Section 6212, Internal Revenue Code 1
Section 351, Internal Revenue Code 2
Section 1239, Internal Revenue Code 2

Regulations

Reg. § 301.6500-(a-1), Internal Revenue Service 2

Rules of the Supreme Court

Rule 23(1) 3

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PETITIONER'S REPLY BRIEF

The determination of the validity of the assessment of Minimum Tax in the above entitled case must be determined by consideration of the following:

JURISDICTION

1. The required Statutory Notice of Deficiency, Section 6212, must be explicitly and unequivocably complied with as a condition precedent to the initiation of any proposed tax adjustment. It broaches of no constructive compliances in whatever manner or form.

2. The Tax Court is without jurisdiction in the matter of the deficiency in Minimum Tax in the above entitled case, since the deficiency surfaced for the first time at the conclusion of a tax case in which the issue then litigated was normal gain (100% taxable) under Section 1239 versus tax free exchange under Section 351.
3. The facts of the case clearly indicates that the Minimum Tax Deficiency was never a part of a prior Statutory Notice of Deficiency. Nor can the minimum tax deficiency be determined to be analogous or contiguous to the contentions or issues raised by either Petitioner or Respondent, in their prior litigation.

ARGUMENT

There is no basis to support the conclusion of res judicata based on the Tax Court's decision, for without the Statutory Notice of Deficiency convering the Minimum Tax assessment in question, the Tax Court is shorn of any jurisdiction in the matter.

Furthermore, because the assessment of the minimum tax at issue was the result and consequence of the Service's failure to prevail in its original attempt to establish Normal Gain, foresaking its opportunity to then prevail on the question of Minimum Tax, much time has been lost.

For even if there were compliance with the Statutory Notice of Deficiency, such compliance will still be aborted by the Statute of Limitations in attempting the new assessment at such a late date. (*Reg.* § *301. 6501(a)-1*)

CITATION

The dictum of the Court in *Thompson v. United States* 430 F.2d 388 (5th Cir. 1970) is appropriate, in that the case at hand reflects a parallel, though not an analogous situation.

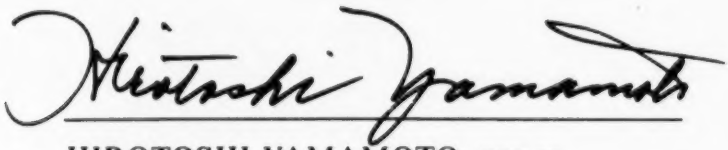
If the Court can distinguish the separation of different years, the separation of different tax provisions of the Code should likewise be recognized. Minimum Tax belongs to an entirely different section of the Code, wholly distinct and apart in calculations from the provisions of the Code for the determination of ordinary income

taxes. A mere examination of the tax return form itself will clearly show that the Service has characterized and classified Minimum Tax as *Other Taxes*.

CONCLUSION

Wherefore Petitioner respectfully requests a SUMMARY DISPOSITION ON THE MERITS in accordance with Rule 23(1) of the Supreme Court. And that Petitioner be awarded his refund of $53,640.84, plus interest, and cost.

DATED: Honolulu, Hawaii, January 12, 1987.



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for Petioner

CERTIFICATE OF SERVICE

The undersigned certifies that three (3) copies of the foregoing Petitioner's Reply Brief were transmitted, postage prepaid, by the U.S. Postal Service to:

CHARLIES FRIED,
Solicitor General
Department of Justice
Washington, D.C. 20530

DATED: Honolulu, Hawaii, January 12, 1987.

HIROTOSHI YAMAMOTO